

1 AN ACT relating to taxation.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 131.190 is amended to read as follows:

4 (1) No present or former commissioner or employee of the department, present or
5 former member of a county board of assessment appeals, present or former property
6 valuation administrator or employee, present or former secretary or employee of the
7 Finance and Administration Cabinet, former secretary or employee of the Revenue
8 Cabinet, or any other person, shall intentionally and without authorization inspect or
9 divulge any information acquired by him of the affairs of any person, or information
10 regarding the tax schedules, returns, or reports required to be filed with the
11 department or other proper officer, or any information produced by a hearing or
12 investigation, insofar as the information may have to do with the affairs of the
13 person's business.

14 (2) The prohibition established by subsection (1) of this section shall not extend to:

15 (a) Information required in prosecutions for making false reports or returns of
16 property for taxation, or any other infraction of the tax laws;

17 (b) Any matter properly entered upon any assessment record, or in any way made
18 a matter of public record;

19 (c) Furnishing any taxpayer or his properly authorized agent with information
20 respecting his own return;

21 (d) Testimony provided by the commissioner or any employee of the department
22 in any court, or the introduction as evidence of returns or reports filed with the
23 department, in an action for violation of state or federal tax laws or in any
24 action challenging state or federal tax laws;

25 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
26 energy resources assessed under KRS 132.820, or owners of surface land
27 under which the unmined minerals lie, factual information about the owner's

1 property derived from third-party returns filed for that owner's property, under
2 the provisions of KRS 132.820, that is used to determine the owner's
3 assessment. This information shall be provided to the owner on a confidential
4 basis, and the owner shall be subject to the penalties provided in KRS
5 131.990(2). The third-party filer shall be given prior notice of any disclosure
6 of information to the owner that was provided by the third-party filer;

7 (f) Providing to a third-party purchaser pursuant to an order entered in a
8 foreclosure action filed in a court of competent jurisdiction, factual
9 information related to the owner or lessee of coal, oil, gas reserves, or any
10 other mineral resources assessed under KRS 132.820. The department may
11 promulgate an administrative regulation establishing a fee schedule for the
12 provision of the information described in this paragraph. Any fee imposed
13 shall not exceed the greater of the actual cost of providing the information or
14 ten dollars (\$10);

15 (g) Providing information to a licensing agency, the Transportation Cabinet, or
16 the Kentucky Supreme Court under KRS 131.1817;

17 (h) Statistics of gasoline and special fuels gallonage reported to the department
18 under KRS 138.210 to 138.448;

19 (i) Providing any utility gross receipts license tax return information that is
20 necessary to administer the provisions of KRS 160.613 to 160.617 to
21 applicable school districts on a confidential basis;~~[-or]~~

22 (j) **Providing documents, data, or other information to a third party pursuant**
23 **to an order issued by a court of competent jurisdiction; or**

24 (k) Providing information to the Legislative Research Commission under:

- 25 1. KRS 139.519 for purposes of the sales and use tax refund on building
26 materials used for disaster recovery;
- 27 2. KRS 141.436 for purposes of the energy efficiency products credits;

- 1 3. KRS 141.437 for purposes of the ENERGY STAR home and the
- 2 ENERGY STAR manufactured home credits;
- 3 4. KRS 148.544 for purposes of the film industry incentives;
- 4 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
- 5 tax credits and the job assessment fees;
- 6 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 7 7. KRS 141.396 for purposes of the angel investor tax credit;
- 8 8. KRS 141.389 for purposes of the distilled spirits credit;~~[-and]~~
- 9 9. KRS 141.408 for purposes of the inventory credit; **and**
- 10 **10. KRS 141.390 for purposes of the recycling and composting credit.**

11 (3) The commissioner shall make available any information for official use only and on
12 a confidential basis to the proper officer, agency, board or commission of this state,
13 any Kentucky county, any Kentucky city, any other state, or the federal government,
14 under reciprocal agreements whereby the department shall receive similar or useful
15 information in return.

16 (4) Access to and inspection of information received from the Internal Revenue Service
17 is for department use only, and is restricted to tax administration purposes.
18 Information received from the Internal Revenue Service shall not be made available
19 to any other agency of state government, or any county, city, or other state, and shall
20 not be inspected intentionally and without authorization by any present secretary or
21 employee of the Finance and Administration Cabinet, commissioner or employee of
22 the department, or any other person.

23 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
24 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
25 as reported to the Department of Revenue under the natural resources severance tax
26 requirements of KRS Chapter 143A may be made public by the department by
27 release to the Energy and Environment Cabinet, Department for Natural Resources.

1 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
2 submissions for the 1989 tax year, the department may make public or divulge only
3 those portions of mine maps submitted by taxpayers to the department pursuant to
4 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
5 out parcel areas. These electronic maps shall not be relied upon to determine actual
6 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
7 required under KRS Chapters 350 and 352 shall not be construed to constitute land
8 surveying or boundary surveys as defined by KRS 322.010 and any administrative
9 regulations promulgated thereto.

10 ➔Section 2. KRS 134.580 is amended to read as follows:

11 (1) As used in this section, unless the context requires otherwise:

12 (a) "Agency" means the agency of state government which administers the tax to
13 be refunded or credited; and

14 (b) "Overpayment" or "payment where no tax was due" means the excess of the
15 tax payments made over the correct tax liability determined under the terms of
16 the applicable statute without reference to the constitutionality of the statute.

17 (2) When money has been paid into the State Treasury in payment of any state taxes,
18 except ad valorem taxes, whether payment was made voluntarily or involuntarily,
19 the appropriate agency shall authorize refunds to the person who paid the tax, or to
20 his heirs, personal representatives or assigns, of any overpayment of tax and any
21 payment where no tax was due. When a bona fide controversy exists between the
22 agency and the taxpayer as to the liability of the taxpayer for the payment of tax
23 claimed to be due by the agency, the taxpayer may pay the amount claimed by the
24 agency to be due, and if an appeal is taken by the taxpayer from the ruling of the
25 agency within the time provided by KRS 49.220 and it is finally adjudged that the
26 taxpayer was not liable for the payment of the tax or any part thereof, the agency
27 shall authorize the refund or credit as the Kentucky Claims Commission or courts

1 may direct.

2 (3) No refund shall be made unless each taxpayer individually files an application or
3 claim for the refund within four (4) years from the date payment was made. Each
4 claim or application for a refund shall be in writing and state the specific grounds
5 upon which it is based. Denials of refund claims or applications may be protested
6 and appealed in accordance with KRS 49.220 and 131.110.

7 (4) Notwithstanding any provision of this section, when an assessment of limited
8 liability entity tax is made under KRS 141.0401 against a pass-through entity as
9 defined in KRS 141.206, the corporation or individual partners, members, or
10 shareholders of the pass-through entity shall have the greater of the time period
11 provided by this section or one hundred eighty (180) days from the date the
12 assessment becomes final to file amended returns requesting any refund of tax
13 for the taxable year of the assessment and to allow for items of income,
14 deduction, and credit to be properly reported on the returns of the partners,
15 members, or shareholders of the pass-through entity subject to adjustment.

16 (5) Refunds shall be authorized with interest as provided in KRS 131.183. The refunds
17 authorized by this section shall be made in the same manner as other claims on the
18 State Treasury are paid. They shall not be charged against any appropriation, but
19 shall be deducted from tax receipts for the current fiscal year.

20 ~~(6)~~⁽⁵⁾ Nothing in this section shall be construed to authorize the agency to make or
21 cause to be made any refund except within four (4) years of the date prescribed by
22 law for the filing of a return including any extension of time for filing the return, or
23 the date the money was paid into the State Treasury, whichever is the later, except
24 in any case where the assessment period has been extended by written agreement
25 between the taxpayer and the department, the limitation contained in this subsection
26 shall be extended accordingly. Nothing in this section shall be construed as
27 requiring the agency to authorize any refund to a taxpayer without demand from the

1 taxpayer, if in the opinion of the agency the cost to the state of authorizing the
2 refund would be greater than the amount that should be refunded or credited.

3 ~~(7)~~~~(6)~~ This section shall not apply to any case in which the statute may be held
4 unconstitutional, either in whole or in part.

5 ~~(8)~~~~(7)~~ In cases in which a statute has been held unconstitutional, taxes paid
6 thereunder may be refunded to the extent provided by KRS 134.590, and by the
7 statute held unconstitutional.

8 ~~(9)~~~~(8)~~ No person shall secure a refund of motor fuels tax under KRS 134.580 unless
9 the person holds an unrevoked refund permit issued by the department before the
10 purchase of gasoline or special fuels and that permit entitles the person to apply for
11 a refund under KRS 138.344 to 138.355.

12 ~~(10)~~~~(9)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the
13 contrary:

14 (a) The Commonwealth hereby revokes and withdraws its consent to suit in any
15 forum whatsoever on any claim for recovery, refund, or credit of any tax
16 overpayment for any taxable year ending before December 31, 1995, made by
17 an amended return or any other method after December 22, 1994, and based
18 on a change from any initially filed separate return or returns to a combined
19 return under the unitary business concept or to a consolidated return. No such
20 claim shall be effective or recognized for any purpose;

21 (b) Any stated or implied consent for the Commonwealth of Kentucky, or any
22 agent or officer of the Commonwealth of Kentucky, to be sued by any person
23 for any legal, equitable, or other relief with respect to any claim for recovery,
24 refund, or credit of any tax overpayment for any taxable year ending before
25 December 31, 1995, made by an amended return or any other method after
26 December 22, 1994, and based on a change from any initially filed separate
27 return or returns to a combined return under the unitary business concept or to

1 a consolidated return, is hereby withdrawn; and

2 (c) The provisions of this subsection shall apply retroactively for all taxable years
3 ending before December 31, 1995, and shall apply to all claims for such
4 taxable years pending in any judicial or administrative forum.

5 ~~(11)~~~~(10)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the
6 contrary:

7 (a) No money shall be drawn from the State Treasury for the payment of any
8 claim for recovery, refund, or credit of any tax overpayment for any taxable
9 year ending before December 31, 1995, made by an amended return or any
10 other method after December 22, 1994, and based on a change from any
11 initially filed separate return or returns to a combined return under the unitary
12 business concept or to a consolidated return; and

13 (b) No provision of the Kentucky Revised Statutes shall constitute an
14 appropriation or mandated appropriation for the payment of any claim for
15 recovery, refund, or credit of any tax overpayment for any taxable year ending
16 before December 31, 1995, made by an amended return or any other method
17 after December 22, 1994, and based on a change from any initially filed
18 separate return or returns to a combined return under the unitary business
19 concept or to a consolidated return.

20 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
21 READ AS FOLLOWS:

22 *(1) Effective for taxable years beginning on or after January 1, 2019, any taxpayer*
23 *required to file a return under KRS 141.180 who is entitled to an income tax*
24 *refund and who desires to contribute to the Kentucky YMCA Youth Assembly*
25 *program may designate an amount, not to exceed the amount of the refund, to be*
26 *paid to the Kentucky YMCA Youth Association. A designation made under this*
27 *section shall not affect the income tax liability of the taxpayer, but it shall reduce*

- 1 *the income tax refund by the amount designated.*
- 2 *(2) The tax refund designation authorized by this section shall be printed on the face*
- 3 *of the Kentucky individual income tax form.*
- 4 *(3) The instructions accompanying the individual income tax return shall include a*
- 5 *description of the Kentucky YMCA Youth Assembly and the purposes for which*
- 6 *the funds from the income tax checkoff may be used.*
- 7 *(4) The department shall, by July 1, 2020, and by July 1 of each year thereafter,*
- 8 *transfer the funds designated by taxpayers under this section to the Kentucky*
- 9 *YMCA Youth Association.*
- 10 *(5) The funds transferred to the Kentucky YMCA Youth Association under*
- 11 *subsection (4) of this section shall be used exclusively in support of the Kentucky*
- 12 *YMCA Youth Assembly program.*

13 ➔Section 4. KRS 141.039 is amended to read as follows:

14 For taxable years beginning on or after January 1, 2018, in the case of corporations:

- 15 (1) Gross income shall be calculated by adjusting federal gross income as defined in
- 16 Section 61 of the Internal Revenue Code as follows:
- 17 (a) Exclude income that is exempt from state taxation by the Kentucky
- 18 Constitution and the Constitution and statutory laws of the United States;
- 19 (b) Exclude all dividend income;
- 20 (c) Include interest income derived from obligations of sister states and political
- 21 subdivisions thereof;
- 22 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
- 23 covered by Section 631(c) of the Internal Revenue Code if the corporation
- 24 does not claim any deduction for percentage depletion, or for expenditures
- 25 attributable to the making and administering of the contract under which such
- 26 disposition occurs or to the preservation of the economic interests retained
- 27 under such contract;

- 1 (e) Include in the gross income of lessors income tax payments made by lessees
2 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
3 and exclude such payments from the gross income of lessees;
- 4 (f) Include the amount calculated under KRS 141.205;
- 5 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
6 computing gross income;
- 7 (h) Include the amount of depreciation deduction calculated under 26 U.S.C. sec.
8 167 or 168; and
- 9 (2) Net income shall be calculated by subtracting from gross income:
- 10 (a) The deduction for depreciation allowed by KRS 141.0101;
- 11 (b) Any amount paid for vouchers or similar instruments that provide health
12 insurance coverage to employees or their families;~~and~~
- 13 (c) All the deductions from gross income allowed corporations by Chapter 1 of
14 the Internal Revenue Code, as modified by KRS 141.0101, except:
- 15 1. Any deduction for a state tax which is computed, in whole or in part, by
16 reference to gross or net income and which is paid or accrued to any
17 state of the United States, the District of Columbia, the Commonwealth
18 of Puerto Rico, any territory or possession of the United States, or to any
19 foreign country or political subdivision thereof;
- 20 2. The deductions contained in Sections 243, 244, 245, and 247 of the
21 Internal Revenue Code;
- 22 3. The provisions of Section 281 of the Internal Revenue Code shall be
23 ignored in computing net income;
- 24 4. Any deduction directly or indirectly allocable to income which is either
25 exempt from taxation or otherwise not taxed under the provisions of this
26 chapter, and nothing in this chapter shall be construed to permit the
27 same item to be deducted more than once;

- 1 5. Any deduction for amounts paid to any club, organization, or
2 establishment which has been determined by the courts or an agency
3 established by the General Assembly and charged with enforcing the
4 civil rights laws of the Commonwealth, not to afford full and equal
5 membership and full and equal enjoyment of its goods, services,
6 facilities, privileges, advantages, or accommodations to any person
7 because of race, color, religion, national origin, or sex, except nothing
8 shall be construed to deny a deduction for amounts paid to any religious
9 or denominational club, group, or establishment or any organization
10 operated solely for charitable or educational purposes which restricts
11 membership to persons of the same religion or denomination in order to
12 promote the religious principles for which it is established and
13 maintained;
- 14 6. Any deduction prohibited by KRS 141.205; and
- 15 7. Any dividends-paid deduction of any captive real estate investment
16 trust; and

17 (d) 1. A deferred tax deduction in an amount computed in accordance with
18 this paragraph.

19 2. For purposes of this paragraph:

20 a. "Net deferred tax liability" means deferred tax liabilities that
21 exceed the deferred tax assets of a combined group as defined in
22 Section 5 of this Act, as computed in accordance with
23 accounting principles generally accepted in the United States of
24 America; and

25 b. "Net deferred tax asset" means that deferred tax assets exceed
26 the deferred tax liabilities of the combined group, as computed in
27 accordance with accounting principles generally accepted in the

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United States of America.

3. Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with accounting principles generally accepted in the United States of America, as of January 1, 2019, shall be eligible for this deduction.
4. If the provisions of Section 5 of this Act result in an aggregate increase to the member's net deferred tax liability, an aggregate decrease to the member's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.
5. For ten (10) years beginning with the combined group's first taxable year beginning on or after January 1, 2024, a combined group shall be entitled to a deduction from the combined group's entire net income equal to one-tenth (1/10) of the amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. The increase in the net deferred tax liability, decrease in the net deferred tax asset, or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the combined reporting requirement under Section 5 of this Act, but for the deduction provided under this paragraph as of the effective date of this paragraph.
6. The deferred tax impact determined in subparagraph 5. of this paragraph shall be converted to the annual deferred tax deduction

1 amount, as follows:

2 a. The deferred tax impact determined in subparagraph 5. of this
3 paragraph shall be divided by the tax rate determined under
4 Section 12 of this Act;

5 b. The resulting amount shall be further divided by the
6 apportionment factor determined by KRS 141.120 or 141.121
7 that was used by the combined group in the calculation of the
8 deferred tax assets and deferred tax liabilities as described in
9 subparagraph 5. of this paragraph;

10 c. The resulting amount represents the total net deferred tax
11 deduction available over the ten (10) year period as described in
12 subparagraph 5. of this paragraph.

13 7. The deduction calculated under this paragraph shall not be adjusted
14 as a result of any events happening subsequent to the calculation,
15 including but not limited to any disposition or abandonment of assets.
16 The deduction shall be calculated without regard to the federal tax
17 effect and shall not alter the tax basis of any asset. If the deduction
18 under this section is greater than the combined group's entire
19 Kentucky net income, any excess deduction shall be carried forward
20 and applied as a deduction to the combined group's entire net income
21 in future taxable years until fully utilized.

22 8. Any combined group intending to claim a deduction under this
23 paragraph shall file a statement with the department on or before July
24 1, 2019. The statement shall specify the total amount of the deduction
25 which the combined group claims on the form including calculations
26 and other information supporting the total amounts of the deduction
27 as required by the department. No deduction shall be allowed under

1 **this paragraph for any taxable year except to the extent claimed on the**
 2 **timely filed statement in accordance with this paragraph.**

3 ➔Section 5. KRS 141.202 is amended to read as follows:

- 4 (1) This section shall apply to taxable years beginning on or after January 1, 2019.
- 5 (2) As used in this section:
- 6 (a) "Combined group" means the group of all corporations whose income and
 7 apportionment factors are required to be taken into account as provided in
 8 subsection (3) of this section in determining the taxpayer's share of the net
 9 income or loss apportionable to this state. **A combined group shall include**
 10 **only corporations, the voting stock of which is more than fifty percent (50%)**
 11 **owned, directly or indirectly, by a common owner or owners;**
- 12 (b) "Corporation" has the same meaning as in KRS 141.010, including an
 13 organization of any kind treated as a corporation for tax purposes under KRS
 14 141.040, wherever located, which if it were doing business in this state would
 15 be a taxpayer, and the business conducted by a pass-through entity which is
 16 directly or indirectly held by a corporation shall be considered the business of
 17 the corporation to the extent of the corporation's distributive share of the pass-
 18 through entity income, inclusive of guaranteed payments;
- 19 (c) "Doing business in a tax haven" means being engaged in activity sufficient for
 20 that tax haven jurisdiction to impose a tax under United States constitutional
 21 standards;
- 22 (d) **1.** "Tax haven" means a jurisdiction that, during the taxable year has no or
 23 nominal effective tax on the relevant income and:
- 24 **a.[1-]**Has laws or practices that prevent effective exchange of
 25 information for tax purposes with other governments on taxpayers
 26 benefitting from the tax regime;
- 27 **b.[2-]**Has a tax regime which lacks transparency. A tax regime lacks

1 transparency if the details of legislative, legal, or administrative
 2 provisions are not open and apparent or are not consistently
 3 applied among similarly situated taxpayers, or if the information
 4 needed by tax authorities to determine a taxpayer's correct tax
 5 liability, such as accounting records and underlying
 6 documentation, is not adequately available;

7 ~~c.[3.]~~ Facilitates the establishment of foreign-owned entities without the
 8 need for a local substantive presence or prohibits these entities
 9 from having any commercial impact on the local economy;

10 ~~d.[4.]~~ Explicitly or implicitly excludes the jurisdiction's resident
 11 taxpayers from taking advantage of the tax regime's benefits or
 12 prohibits enterprises that benefit from the regime from operating in
 13 the jurisdiction's domestic market; or

14 ~~e.[5.]~~ Has created a tax regime which is favorable for tax avoidance,
 15 based upon an overall assessment of relevant factors, including
 16 whether the jurisdiction has a significant untaxed offshore
 17 financial or other services sector relative to its overall economy.

18 **2. "Tax haven" does not include a jurisdiction that has entered into a**
 19 **comprehensive income tax treaty with the United States, which the**
 20 **Secretary of the Treasury has determined is satisfactory for purposes**
 21 **of Section 1(h)(11)(C)(i)(II) of the Internal Revenue Code;**

22 (e) "Taxpayer" means any corporation subject to the tax imposed under this
 23 chapter;

24 (f) "Unitary business" means a single economic enterprise that is made up either
 25 of separate parts of a single corporation or of a commonly controlled group of
 26 corporations that are sufficiently interdependent, integrated, and interrelated
 27 through their activities so as to provide a synergy and mutual benefit that

1 produces a sharing or exchange of value among them and a significant flow of
2 value to the separate parts. For purposes of this section, the term "unitary
3 business" shall be broadly construed, to the extent permitted by the United
4 States Constitution; and

5 (g) "United States" means the fifty (50) states of the United States, the District of
6 Columbia, and United States' territories and possessions.

7 (3) (a) Except as provided in KRS 141.201, a taxpayer engaged in a unitary business
8 with one (1) or more other corporations shall file a combined report which
9 includes the income, determined under subsection (5) of this section, and the
10 apportionment fraction, determined under KRS 141.120 and paragraph (d) of
11 this subsection, of all corporations that are members of the unitary business,
12 and any other information as required by the department. *The combined*
13 *report shall be filed on a waters-edge basis under subsection (8) of this*
14 *section.*

15 (b) The department may, by administrative regulation, require that the combined
16 report include the income and associated apportionment factors of any
17 corporations that are not included as provided by paragraph (a) of this
18 subsection, but that are members of a unitary business, in order to reflect
19 proper apportionment of income of the entire unitary businesses. Authority to
20 require combination by administrative regulation under this paragraph
21 includes authority to require combination of corporations that are not, or
22 would not be combined, if the corporation were doing business in this state.

23 (c) In addition, if the department determines that the reported income or loss of a
24 taxpayer engaged in a unitary business with any corporation not included as
25 provided by paragraph (a) of this subsection represents an avoidance or
26 evasion of tax by the taxpayer, the department may, on a case-by-case basis,
27 require all or any part of the income and associated apportionment factors of

1 the corporation be included in the taxpayer's combined report.

2 (d) With respect to the inclusion of associated apportionment factors as provided
3 in paragraph (a) of this subsection, the department may require the inclusion
4 of any one (1) or more additional factors which will fairly represent the
5 taxpayer's business activity in this state, or the employment of any other
6 method to effectuate a proper reflection of the total amount of income subject
7 to apportionment and an equitable allocation and apportionment of the
8 taxpayer's income.

9 (e) *A unitary business shall consider the combined gross receipts and combined*
10 *income from all sources of all members under subsection (8) of this section,*
11 *including eliminating entries for transactions among the members under*
12 *subsection (8)(e) of this section.*

13 (f) Notwithstanding paragraphs (a) to (e)~~(d)~~ of this subsection, a consolidated
14 return may be filed as provided in KRS 141.201 if the taxpayer makes an
15 election according to KRS 141.201.

16 (4) The use of a combined report does not disregard the separate identities of the
17 taxpayer members of the combined group. Each taxpayer member is responsible for
18 tax based on its taxable income or loss apportioned or allocated to this state, which
19 shall include, in addition to the other types of income, the taxpayer member's share
20 of apportionable income of the combined group, where apportionable income of the
21 combined group is calculated as a summation of the individual net incomes of all
22 members of the combined group. A member's net income is determined by
23 removing all but apportionable income, expense, and loss from that member's total
24 income as provided in subsection (5) of this section.

25 (5) (a) Each taxpayer member is responsible for tax based on its taxable income or
26 loss apportioned or allocated to this state, which shall include:

27 1. Its share of any income apportionable to this state of each of the

- 1 combined groups of which it is a member, determined under subsection
2 (6) of this section;
- 3 2. Its share of any income apportionable to this state of a distinct business
4 activity conducted within and without the state wholly by the taxpayer
5 member, determined under KRS 141.120;
- 6 3. Its income from a business conducted wholly by the taxpayer member
7 entirely within the state;
- 8 4. Its income sourced to this state from the sale or exchange of capital or
9 assets, and from involuntary conversions, as determined under
10 subsection (8)(k) of this section;
- 11 5. Its nonapportionable income or loss allocable to this state, determined
12 under KRS 141.120;
- 13 6. Its income or loss allocated or apportioned in an earlier year, required to
14 be taken into account as state source income during the income year,
15 other than a net operating loss; and
- 16 7. Its net operating loss carryover.~~[If the taxable income computed
17 pursuant to this subsection results in a loss for a taxpayer member of the
18 combined group, that taxpayer member has a Kentucky net operating
19 loss, subject to the net operating loss limitations and carry forward
20 provisions of KRS 141.011. The net operating loss is applied as a
21 deduction in a subsequent year only if that taxpayer has Kentucky source
22 positive net income, whether or not the taxpayer is or was a member of a
23 combined reporting group in the subsequent year.]~~
- 24 (b) No tax credit or post-apportionment deduction earned by one (1) member of
25 the group, but not fully used by or allowed to that member, may be used in
26 whole or in part by another member of the group or applied in whole or in part
27 against the total income of the combined group.

1 (c) If the taxable income computed pursuant to Section 4 of this Act results in a
2 net loss for a taxpayer member of the combined group, that taxpayer
3 member has a Kentucky net operating loss, subject to the net operating loss
4 limitations and carry forward provisions of KRS 141.011. No prior year net
5 operating loss carryforward shall be available to entities that were not doing
6 business in this state in the year in which the loss was incurred. A Kentucky
7 net operating loss carryover incurred by a taxpayer member of a combined
8 group shall be deducted from income or loss apportioned to this state
9 pursuant to this section as follows:

10 1. For taxable years beginning on or after the first day of the initial
11 taxable year for which a combined unitary tax return is required
12 under this section, if the computation of a combined group's Kentucky
13 net income before apportionment to this state results in a net
14 operating loss, a taxpayer member of the group may carry over its
15 share of the net operating loss as apportioned to this state, as
16 calculated under this section and in accordance with KRS 141.120 or
17 141.121, and it shall be deductible from a taxpayer member's
18 apportioned net income derived from the unitary business in a future
19 tax year to the extent that the carryover and deduction is otherwise
20 consistent with KRS 141.011;

21 2. Where a taxpayer member of a combined group has a Kentucky net
22 operating loss carryover derived from a loss incurred by a combined
23 group in a tax year beginning on or after the first day of the initial tax
24 year for which a combined unitary tax return is required under this
25 section, then the taxpayer member may share the net operating loss
26 carryover with other taxpayer members of the combined group if the
27 other taxpayer members were members of the combined group in the

1 tax year that the loss was incurred. Any amount of net operating loss
2 carryover that is deducted by another taxpayer member of the
3 combined group shall reduce the amount of net operating loss
4 carryover that may be carried over by the taxpayer member that
5 originally incurred the loss;

6 3. Where a taxpayer member of a combined group has a net operating
7 loss carryover derived from a loss incurred in a tax year prior to the
8 initial tax year for which a combined unitary tax return is required
9 under this section, the carryover shall remain available to be deducted
10 by that taxpayer member and any other taxpayer members of the
11 combined group but in no case shall the deduction reduce any
12 taxpayer member's Kentucky apportioned taxable income by more
13 than fifty percent (50%) in any taxable year, other than the taxpayer
14 member that originally incurred the net operating loss, in which case
15 no limitation is provided except as provided by Section 172 of the
16 Internal Revenue Code. Any net operating loss carryover that is not
17 utilized in a particular taxable year shall be carried over by the
18 taxpayer member that generated the loss and utilized in the future
19 consistent with the limitations of this subparagraph; or

20 4. Where a taxpayer member of a combined group has a net operating
21 loss carryover derived from a loss incurred in a tax year during which
22 the taxpayer member was not a taxpayer member of the combined
23 group, the carryover shall remain available to be deducted by that
24 taxpayer member or other taxpayer members but in no case shall the
25 deduction reduce any taxpayer member's Kentucky apportioned
26 taxable income by more than fifty percent (50%) in any taxable year,
27 other than the taxpayer member that originally incurred the net

1 operating loss, in which case no limitation is provided except as
2 provided by Section 172 of the Internal Revenue Code. Any net
3 operating loss carryover that is not utilized in a particular taxable
4 year, shall be carried over by the taxpayer member that generated the
5 loss and utilized in the future consistent with the limitations of this
6 subparagraph~~[A post-apportionment deduction carried over into a~~
7 ~~subsequent year as to the member that incurred it, and available as a~~
8 ~~deduction to that member in a subsequent year, will be considered in the~~
9 ~~computation of the income of that member in the subsequent year,~~
10 ~~regardless of the composition of that income as apportioned, allocated,~~
11 ~~or wholly within this state].~~

- 12 (6) The taxpayer's share of the business income apportionable to this state of each
13 combined group of which it is a member shall be the product of:
- 14 (a) The apportionable income of the combined group, determined under
15 subsection (7) of this section; and
- 16 (b) The taxpayer member's apportionment fraction, determined under KRS
17 141.120, including in the sales factor numerator the taxpayer's sales associated
18 with the combined group's unitary business in this state, and including in the
19 denominator the sales of all members of the combined group, including the
20 taxpayer, which sales are associated with the combined group's unitary
21 business wherever located. The sales of a pass-through entity shall be included
22 in the determination of the partner's apportionment percentage in proportion to
23 a ratio, the numerator of which is the amount of the partner's distributive share
24 of the pass-through entity's unitary income included in the income of the
25 combined group as provided in subsection (8) of this section and the
26 denominator of which is the amount of pass-through entity's total unitary
27 income.

- 1 (7) The apportionable income of a combined group is determined as follows:
- 2 (a) The total income of the combined group is the sum of the income of each
- 3 member of the combined group determined under federal income tax laws, as
- 4 adjusted for state purposes, as if the member were not consolidated for federal
- 5 purposes; and
- 6 (b) From the total income of the combined group determined under subsection (8)
- 7 of this section, subtract any income and add any expense or loss, other than
- 8 the apportionable income, expense, or loss of the combined group.
- 9 (8) To determine the total income of the combined group, taxpayer members shall take
- 10 into account all or a portion of the income and apportionment factor of only the
- 11 following members otherwise included in the combined group as provided in
- 12 subsection (3) of this section:
- 13 (a) The entire income and apportionment percentage of any member, incorporated
- 14 in the United States or formed under the laws of any state, the District of
- 15 Columbia, or any territory or possession of the United States, *that earns less*
- 16 *than eighty percent (80%) of its income from sources outside of the United*
- 17 *States, the District of Columbia, or any territory or possession of the United*
- 18 *States;*
- 19 (b) Any member that earns more than twenty percent (20%) of its income, directly
- 20 or indirectly, from intangible property or service related activities that are
- 21 deductible against the apportionable income of other members of the
- 22 combined group, to the extent of that income and the apportionment factor
- 23 related to that income, *If a non-U.S. corporation is includible as a member*
- 24 *in the combined group, to the extent that the non-U.S. corporation's income*
- 25 *is excluded from U.S. taxation pursuant to the provisions of a*
- 26 *comprehensive income tax treaty, the income or loss is not includible in the*
- 27 *combined group's net income or loss. The member's expenses or*

1 apportionment factors attributable to income that is excluded from U.S.
2 taxation pursuant to the provisions of a comprehensive income tax treaty
3 are not to be included in the combined report;

4 (c) The entire income and apportionment factor of any member that is doing
5 business in a tax haven. If the member's business activity within a tax haven is
6 entirely outside the scope of the laws, provisions, and practices that cause the
7 jurisdiction to meet the definition established in subsection (2)(d) of this
8 section, the activity of the member shall be treated as not having been
9 conducted in a tax haven;

10 (d) If a unitary business includes income from a pass-through entity, the income
11 to be included in the total income of the combined group shall be the member
12 of the combined group's direct and indirect distributive share of the pass-
13 through entity's unitary income;

14 (e) Income from an intercompany transaction between members of the same
15 combined group shall be deferred in a manner similar to 26 C.F.R. 1.1502-13.
16 Upon the occurrence of any of the following events, deferred income resulting
17 from an intercompany transaction between members of a combined group
18 shall be restored to the income of the seller, and shall be apportionable income
19 earned immediately before the event:

20 1. The object of a deferred intercompany transaction is:

21 a. Resold by the buyer to an entity that is not a member of the
22 combined group;

23 b. Resold by the buyer to an entity that is a member of the combined
24 group for use outside the unitary business in which the buyer and
25 seller are engaged; or

26 c. Converted by the buyer to a use outside the unitary business in
27 which the buyer and seller are engaged; or

- 1 2. The buyer and seller are no longer members of the same combined
2 group, regardless of whether the members remain unitary;
- 3 (f) A charitable expense incurred by a member of a combined group shall, to the
4 extent allowable as a deduction provided by Section 170 of the Internal
5 Revenue Code, be subtracted first from the apportionable income of the
6 combined group, subject to the income limitations of that section applied to
7 the entire apportionable income of the group, and any remaining amount shall
8 then be treated as a nonapportionable expense allocable to the member that
9 incurred the expense, subject to the income limitations of that section applied
10 to the nonapportionable income of that specific member. Any charitable
11 deduction disallowed under this paragraph, but allowed as a carryover
12 deduction in a subsequent year, shall be treated as originally incurred in the
13 subsequent year by the same member, and this paragraph shall apply in the
14 subsequent year in determining the allowable deduction in that year;
- 15 (g) Gain or loss from the sale or exchange of capital assets, property described by
16 Section 1231(a)(3) of the Internal Revenue Code, and property subject to an
17 involuntary conversion shall be removed from the total separate net income of
18 each member of a combined group and shall be apportioned and allocated as
19 follows:
- 20 1. For each class of gain or loss, including short-term capital, long-term
21 capital, Internal Revenue Code Section 1231, and involuntary
22 conversions, all members' gain and loss for the class shall be combined,
23 without netting between the classes, and each class of net gain or loss
24 separately apportioned to each member using the member's
25 apportionment percentage determined under subsection (6) of this
26 section;
- 27 2. Each taxpayer member shall then net its apportioned business gain or

- 1 loss for all classes, including any apportioned gain and loss from other
2 combined groups, against the taxpayer member's nonapportionable gain
3 and loss for all classes allocated to this state, using the rules of Sections
4 1231 and 1222 of the Internal Revenue Code, without regard to any of
5 the taxpayer member's gains or losses from the sale or exchange of
6 capital assets, Internal Revenue Code Section 1231 property, and
7 involuntary conversions which are nonapportionable items allocated to
8 another state;
- 9 3. Any resulting state source income or loss, if the loss is not subject to the
10 limitations of Section 1211 of the Internal Revenue Code, of a taxpayer
11 member produced by the application of subparagraphs 1. and 2. of this
12 paragraph shall then be applied to all other state source income or loss of
13 that member; and
- 14 4. Any resulting state source loss of a member that is subject to the
15 limitations of Section 1211 of the Internal Revenue Code shall be
16 carried forward by that member, and shall be treated as state source
17 short-term capital loss incurred by that member for the year for which
18 the carryover applies; and
- 19 (h) Any expense of one (1) member of the unitary group which is directly or
20 indirectly attributable to the nonapportionable or exempt income of another
21 member of the unitary group shall be allocated to that other member as
22 corresponding nonapportionable or exempt expense, as appropriate.
- 23 (9) (a) As a filing convenience, and without changing the respective liability of the
24 group members, members of a combined reporting group shall annually
25 designate one (1) taxpayer member of the combined group to file a single
26 return in the form and manner prescribed by the department, in lieu of filing
27 their own respective returns.

1 (b) The taxpayer member designated to file the single return shall consent to act
2 as surety with respect to the tax liability of all other taxpayers properly
3 included in the combined report, and shall agree to act as agent on behalf of
4 those taxpayers for the taxable year for matters relating to the combined
5 report. If for any reason the surety is unwilling or unable to perform its
6 responsibilities, tax liability may be assessed against the taxpayer members.

7 ➔Section 6. KRS 132.190 is amended to read as follows:

8 (1) All property shall be subject to taxation, unless it is exempted by the Constitution or
9 in the case of personal property unless it is exempted by the Constitution or by
10 statute. Twenty-five (25) domestic fowl to each family shall be exempt from
11 taxation for any purpose.

12 (2) All intangible personal property of corporations organized under the laws of this
13 state, unless it has acquired a business situs without this state, shall be considered
14 and estimated in fixing the valuation of corporate franchises.

15 (3) Property shall be assessed for taxation at its fair cash value, estimated at the price it
16 would bring at a fair voluntary sale, except: real property qualifying for an
17 assessment moratorium shall not have its fair cash value assessment changed while
18 under the assessment moratorium unless the assessment moratorium expires or is
19 otherwise canceled or revoked.

20 (4) Nothing contained in this section shall affect the liability for franchise taxes payable
21 by corporations organized under the laws of this state~~]; nor the method of taxation~~
22 ~~of financial institutions provided in KRS 136.505; nor the method of taxation of~~
23 ~~savings and loan associations provided in KRS 136.300].~~

24 ➔SECTION 7. A NEW SECTION OF KRS 136.290 TO 136.310 IS CREATED
25 TO READ AS FOLLOWS:

26 **(1) Beginning January 1, 2021, the savings and loan tax under KRS 136.290,**
27 **136.300, and 136.310 shall no longer apply to savings and loan associations.**

1 (2) Beginning January 1, 2021, all savings and loan associations shall be subject to
 2 the corporation income tax under Section 12 of this Act and the limited liability
 3 entity tax under Section 13 of this Act. Notwithstanding Sections 12 and 13 of
 4 this Act, any savings and loan association operating on a fiscal year shall file a
 5 short-year corporation income and limited liability entity tax return and pay any
 6 tax due thereon for the period beginning January 1, 2021, through the end of the
 7 savings and loan association's normal fiscal year. The department may issue
 8 guidance regarding the filing of the short-year return.

9 ➔SECTION 8. A NEW SECTION OF KRS 136.500 TO 136.575 IS CREATED
 10 TO READ AS FOLLOWS:

11 (1) Beginning January 1, 2021, the state bank franchise tax under Section 10 of this
 12 Act shall no longer apply to financial institutions.

13 (2) Beginning January 1, 2021, all financial institutions shall be subject to the
 14 corporation income tax under Section 12 of this Act and the limited liability entity
 15 tax under Section 13 of this Act. Notwithstanding Section 12 or 13 of this Act,
 16 any financial institution operating on a fiscal year basis shall file a short-year
 17 corporation income and limited liability entity tax return and pay any tax due
 18 thereon for the period beginning January 1, 2021, through the end of the
 19 financial institution's normal fiscal year. The department may issue guidance
 20 regarding the filing of the short-year return.

21 (3) Financial institutions shall be subject to all applicable local government
 22 franchise taxes imposed under Section 11 of this Act.

23 ➔Section 9. KRS 136.500 is amended to read as follows:

24 As used in KRS 136.500 to 136.575, unless the context requires otherwise:

25 (1) "Billing address" means the location indicated in the books and records of the
 26 financial institution, on the first day of the taxable year or the date in the taxable
 27 year when the customer relationship began, as the address where any notice,

1 statement, or bill relating to a customer's account is mailed;

2 (2) "Borrower located in this state" means a borrower, other than a credit card holder,
3 that is engaged in a trade or business that maintains its commercial domicile in this
4 state or a borrower that is not engaged in a trade or business;

5 (3) "Credit card holder located in this state" means a credit card holder whose billing
6 address is in this state;

7 (4) "Department" means the Department of Revenue;

8 (5) "Commercial domicile" means:

9 (a) The location from which the trade or business is principally managed and
10 directed; or

11 (b) The state of the United States or the District of Columbia from which the
12 financial institution's trade or business in the United States is principally
13 managed and directed, if a financial institution is organized under the laws of
14 a foreign country, the Commonwealth of Puerto Rico, or any territory or
15 possession of the United States.

16 It shall be presumed, subject to rebuttal, that the location from which the financial
17 institution's trade or business is principally managed and directed is the state of the
18 United States or the District of Columbia to which the greatest number of
19 employees are regularly connected or out of which they are working, irrespective of
20 where the services of the employees are performed, as of the last day of the taxable
21 year;

22 (6) "Compensation" means wages, salaries, commissions, and any other form of
23 remuneration paid to employees for personal services that are included in the
24 employee's gross income under the Internal Revenue Code. In the case of employees
25 not subject to the Internal Revenue Code, the determination of whether the
26 payments would constitute gross income to the employees under the Internal
27 Revenue Code shall be made as though the employees were subject to the Internal

- 1 Revenue Code;
- 2 (7) "Credit card" means credit, travel, or entertainment card;
- 3 (8) "Credit card issuer's reimbursement fee" means the fee a financial institution
4 receives from a merchant's bank because one (1) of the persons to whom the
5 financial institution has issued a credit card has charged merchandise or services to
6 the credit card;
- 7 (9) "Employee" means, with respect to a particular financial institution, "employee" as
8 defined in Section 3121(d) of the Internal Revenue Code;
- 9 (10) "Financial institution" means:
- 10 (a) A national bank organized as a body corporate and existing or in the process
11 of organizing as a national bank association pursuant to the provisions of the
12 National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31,
13 1997, exclusive of any amendments made subsequent to that date;
- 14 (b) Any bank or trust company incorporated or organized under the laws of any
15 state, except a banker's bank organized under KRS 286.3-135;
- 16 (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631,
17 in effect on December 31, 1997, exclusive of any amendments made
18 subsequent to that date, or any corporation organized after December 31,
19 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on
20 December 31, 1997; or
- 21 (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec.
22 3101, in effect on December 31, 1997, exclusive of any amendments made
23 subsequent to that date, or any agency or branch of a foreign depository
24 established after December 31, 1997, that meets the requirements of 12 U.S.C.
25 sec. 3101 in effect on December 31, 1997;
- 26 (11) "Gross rents" means the actual sum of money or other consideration payable for the
27 use or possession of property.

- 1 (a) "Gross rents" includes but is not limited to:
- 2 1. Any amount payable for the use or possession of real property or
- 3 tangible property, whether designated as a fixed sum of money or as a
- 4 percentage of receipts, profits, or otherwise;
- 5 2. Any amount payable as additional rent or in lieu of rent, such as interest,
- 6 taxes, insurance, repairs, or any other amount required to be paid by the
- 7 terms of a lease or other arrangement; and
- 8 3. A proportionate part of the cost of any improvement to real property
- 9 made by or on behalf of the financial institution which reverts to the
- 10 owner or lessor upon termination of a lease or other arrangement. The
- 11 amount to be included in gross rents is the amount of amortization or
- 12 depreciation allowed in computing the taxable income base for the
- 13 taxable year. However, where a building is erected on leased land by or
- 14 on behalf of the financial institution, the value of the land is determined
- 15 by multiplying the gross rent by eight (8) and the value of the building is
- 16 determined in the same manner as if owned by the financial institution;
- 17 (b) The following are not included in the term "gross rents":
- 18 1. Reasonable amounts payable as separate charges for water and electric
- 19 service furnished by the lessor;
- 20 2. Reasonable amounts payable as service charges for janitorial services
- 21 furnished by the lessor;
- 22 3. Reasonable amounts payable for storage, if these amounts are payable
- 23 for space not designated and not under the control of the financial
- 24 institution; and
- 25 4. That portion of any rental payment which is applicable to the space
- 26 subleased from the financial institution and not used by it;
- 27 (12) "Internal Revenue Code" means the Internal Revenue Code, Title 26 U.S.C., in

1 effect on December 31, 2001, exclusive of any amendments made subsequent to
2 that date;

3 (13) "Loan" means any extension of credit resulting from direct negotiations between the
4 financial institution and its customer, and the purchase, in whole or in part, of the
5 extension of credit from another. Loans include participations, syndications, and
6 leases treated as loans for federal income tax purposes. Loans shall not include
7 properties treated as loans under Section 595 of the Internal Revenue Code, futures
8 or forward contracts, options, notional principal contracts such as swaps, credit card
9 receivables, including purchased credit card relationships, noninterest-bearing
10 balances due from depository institutions, cash items in the process of collection,
11 federal funds sold, securities purchased under agreements to resell, assets held in a
12 trading account, securities, interests in a real estate mortgage investment company,
13 or other mortgage-backed or asset-backed security, and other similar items;

14 (14) "Loan secured by real property" means a loan or other obligation for which fifty
15 percent (50%) or more of the aggregate value of the collateral used to secure the
16 loan or other obligation, when valued at fair market value as of the time the original
17 loan or obligation was incurred, was real property;

18 (15) "Merchant discount" means the fee or negotiated discount charged to a merchant by
19 the financial institution for the privilege of participating in a program where a credit
20 card is accepted in payment for merchandise or services sold to the card holder;

21 (16) "Person" means an individual, estate, trust, partnership, corporation, limited liability
22 company, or any other business entity;

23 (17) "Principal base of operations" means:

24 (a) With respect to transportation property, the place from which the property is
25 regularly directed or controlled; and

26 (b) With respect to an employee:

27 1. The place the employee regularly starts work and to which the employee

1 customarily returns in order to receive instructions from his or her
2 employer; or

3 2. If the place referred to in subparagraph 1. of this paragraph does not
4 exist, the place the employee regularly communicates with customers or
5 other persons; or

6 3. If the place referred to in subparagraph 2. of this paragraph does not
7 exist, the place the employee regularly performs any other functions
8 necessary to the exercise of the employee's trade or profession at some
9 other point or points;

10 (18) "Real property owned" and "tangible personal property owned" mean real and
11 tangible personal property, respectively, on which the financial institution may
12 claim depreciation for federal income tax purposes, or property to which the
13 financial institution holds legal title and on which no other person may claim
14 depreciation for federal income tax purposes or could claim depreciation if subject
15 to federal income tax. Real and tangible personal property do not include coin,
16 currency, or property acquired in lieu of or pursuant to a foreclosure;

17 (19) "Regular place of business" means an office at which the financial institution carries
18 on its business in a regular and systematic manner and which is continuously
19 maintained, occupied, and used by employees of the financial institution;

20 (20) "State" means a state of the United States, the District of Columbia, the
21 Commonwealth of Puerto Rico, any territory or possession of the United States, or
22 any foreign country;

23 (21) "Syndication" means an extension of credit in which two (2) or more persons fund
24 and each person is at risk only up to a specified percentage of the total extension of
25 credit or up to a specified dollar amount;

26 (22) (a) "Taxable year" means calendar year 1996 ***through calendar year 2020 for***
27 ***purposes of the state bank franchise tax under Section 10 of this Act;*** and

1 **(b) "Taxable year" means calendar year 1996 and** every calendar year thereafter
 2 **for purposes of the local government franchise tax under Section 11 of this**
 3 **Act;**

4 (23) "Transportation property" means vehicles and vessels capable of moving under their
 5 own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any
 6 equipment or containers attached to the property, such as rolling stock, barges, or
 7 trailers;

8 (24) "United States obligations" means all obligations of the United States exempt from
 9 taxation under 31 U.S.C. sec. 3124(a) or exempt under the United States
 10 Constitution or any federal statute, including the obligations of any instrumentality
 11 or agency of the United States that are exempt from state or local taxation under the
 12 United States Constitution or any statute of the United States; and

13 (25) "Kentucky obligations" means all obligations of the Commonwealth of Kentucky,
 14 its counties, municipalities, taxing districts, and school districts, exempt from
 15 taxation under the Kentucky Revised Statutes and the Constitution of Kentucky.

16 ➔Section 10. KRS 136.505 is amended to read as follows:

17 ~~{(1)}~~ Every financial institution regularly engaged in business in this Commonwealth at
 18 any time during the taxable year as determined under KRS 136.520 shall pay an annual
 19 state franchise tax for each taxable year or portion of a taxable year **prior to January 1,**
 20 **2021,** to be measured by its net capital as determined in KRS 136.515 and, for financial
 21 institutions with business activity that is taxable both within and without this
 22 Commonwealth, apportioned under KRS 136.525.†

23 ~~(2)~~ The tax shall be in lieu of all city, county, and local taxes, except the real estate
 24 transfer tax levied in KRS Chapter 142, real property and tangible personal property
 25 taxes levied in KRS Chapter 132, taxes upon users of utility services, and the local
 26 franchise tax levied in KRS 136.575.

27 ~~(3)~~ Every financial institution regularly engaged in business in this Commonwealth

1 shall be subject to all state taxes in effect on July 15, 1996, except for the
2 corporation income tax levied in KRS Chapter 141, the limited liability entity tax
3 levied in KRS 141.0401, and the corporation license tax levied in this chapter.]

4 ➔Section 11. KRS 136.575 is amended to read as follows:

5 (1) As used in this section:[,]

6 (a) "Deposits" means all demand and time deposits, excluding deposits of the
7 United States government, state and political subdivisions, other financial
8 institutions, public libraries, educational institutions, religious institutions,
9 charitable institutions, and certified and officers' checks; and

10 (b) "Financial institution" means:

11 1. A national bank organized as a body corporate and existing or in the
12 process of organizing as a national bank association pursuant to the
13 provisions of the National Bank Act, 12 U.S.C. secs. 21 et seq., in
14 effect on December 31, 1997, exclusive of any amendments made
15 subsequent to that date;

16 2. Any bank or trust company incorporated or organized under the laws
17 of any state, except a banker's bank organized under KRS 286.3-135;

18 3. Any corporation organized under the provisions of 12 U.S.C. secs. 611
19 to 631, in effect on December 31, 1997, exclusive of any amendments
20 made subsequent to that date, or any corporation organized after
21 December 31, 1997, that meets the requirements of 12 U.S.C. secs. 611
22 to 631, in effect on December 31, 1997; or

23 4. Any agency or branch of a foreign depository as defined in 12 U.S.C.
24 sec. 3101, in effect on December 31, 1997, exclusive of any
25 amendments made subsequent to that date, or any agency or branch of
26 a foreign depository established after December 31, 1997, that meets
27 the requirements of 12 U.S.C. sec. 3101 in effect on December 31,

1 1997.

2 (2) Counties, cities, and urban-county governments may impose a franchise tax on
3 financial institutions measured by the deposits in the institutions located within the
4 jurisdiction of the county, city, or urban-county government at a rate not to exceed
5 twenty-five thousandths of one percent (0.025%) of the deposits if imposed by
6 counties and cities and at a rate not to exceed fifty thousandths of one percent
7 (0.050%) of the deposits if imposed by urban-county governments. The amount and
8 location of deposits in the financial institutions shall be determined by the method
9 used for filing the summary of deposits report with the Federal Deposit Insurance
10 Corporation. The accounting method used to allocate deposits for completion of the
11 summary of deposits shall be the same as has been utilized in prior periods. Any
12 deviation from prior accounting methods may only be adopted with the permission
13 of the department.

14 (3) By August 15, 1997, and annually thereafter, each financial institution shall file
15 with the department, on a form prescribed by the department, a report of all deposits
16 located within this Commonwealth as of the preceding June 30, along with a copy
17 of the most recent summary of deposits filed with the Federal Deposit Insurance
18 Corporation. The department shall review the report and certify to the local
19 jurisdictions that have enacted the franchise tax by October 1 of each year the
20 amount of deposits within the jurisdiction and amount of the tax due. The local
21 taxing authority shall issue bills to the financial institution by December 1 and
22 require payment, with a two percent (2%) discount by December 31, or without
23 discount by January 31 of the next year.

24 ~~(4) For calendar year 1996 only, each financial institution shall file with the department~~
25 ~~on or before September 15, 1996, a report of all deposits located within this~~
26 ~~Commonwealth as of June 30, 1996, along with a copy of the most recent summary~~
27 ~~of deposits filed with the Federal Deposit Insurance Corporation. The department~~

1 shall review the report after being given notice by the local jurisdiction that the tax
 2 under this section was enacted during 1996, and shall certify to the local jurisdiction
 3 the amount of deposits within the jurisdiction and the amount of tax due by March
 4 1, 1997. The local taxing authority shall issue bills to the financial institution by
 5 May 1, 1997, and require payment with a two percent (2%) discount by May 31,
 6 1997, or without discount by June 30, 1997.

7 ~~(5)~~ The local jurisdiction shall notify the department of the tax rate imposed upon the
 8 enactment of the tax. The local jurisdiction shall also notify the department of any
 9 subsequent rate changes.

10 **(5) The tax allowed by this section shall be in lieu of all city, county, and local taxes,**
 11 **except the real estate transfer tax levied in KRS Chapter 142, real property and**
 12 **tangible personal property taxes levied in KRS Chapter 132, and taxes upon users**
 13 **of utility services.**

14 ➔Section 12. KRS 141.040 is amended to read as follows:

15 (1) Every corporation doing business in this state, except those corporations listed in
 16 paragraphs (a) **and (b)**~~[(b)]~~ of this subsection, shall pay for each taxable year a
 17 tax to be computed by the taxpayer on taxable net income at the rates specified in
 18 this section:

19 (a) **For taxable years beginning prior to January 1, 2021:**

20 **1.** Financial institutions, as defined in KRS 136.500, except bankers banks
 21 organized under KRS 286.3-135;

22 **2.**~~[(b)]~~ Savings and loan associations organized under the laws of this
 23 state and under the laws of the United States and making loans to
 24 members only;

25 **3.**~~[(c)]~~ Banks for cooperatives;

26 **4.**~~[(d)]~~ Production credit associations;

27 **5.**~~[(e)]~~ Insurance companies, including **farmers'**~~[farmers]~~ or other mutual

1 hail, cyclone, windstorm, or fire insurance companies, insurers, and
2 reciprocal underwriters;

3 ~~6.[(f)]~~ Corporations or other entities exempt under Section 501 of the
4 Internal Revenue Code;

5 ~~7.[(g)]~~ Religious, educational, charitable, or like corporations not
6 organized or conducted for pecuniary profit; and

7 ~~8.[(h)]~~ Corporations whose only owned or leased property located in this
8 state is located at the premises of a printer with which it has contracted
9 for printing, provided that:

10 ~~a.[(1)]~~ The property consists of the final printed product, or copy from
11 which the printed product is produced; and

12 ~~b.[(2)]~~ The corporation has no individuals receiving compensation in this
13 state as provided in KRS 141.120(8)(b); and

14 **(b) For taxable years beginning on or after January 1, 2021:**

15 **1. Insurance companies, including farmers' or other mutual hail,**
16 **cyclone, windstorm, or fire insurance companies, insurers, and**
17 **reciprocal underwriters;**

18 **2. Corporations or other entities exempt under Section 501 of the**
19 **Internal Revenue Code;**

20 **3. Religious, educational, charitable, or like corporations not organized**
21 **or conducted for pecuniary profit; and**

22 **4. Corporations whose only owned or leased property located in this state**
23 **is located at the premises of a printer with which it has contracted for**
24 **printing, provided that:**

25 **a. The property consists of the final printed product, or copy from**
26 **which the printed product is produced; and**

27 **b. The corporation has no individuals receiving compensation in**

1 *this state as provided in KRS 141.120(8)(b).*

- 2 (2) For taxable years beginning on or after January 1, 2018, the rate of five percent
3 (5%) of taxable net income shall apply.
- 4 (3) For taxable years beginning on or after January 1, 2007, and before January 1, 2018,
5 the following rates shall apply:
- 6 (a) Four percent (4%) of the first fifty thousand dollars (\$50,000) of taxable net
7 income;
- 8 (b) Five percent (5%) of taxable net income over fifty thousand dollars (\$50,000)
9 up to one hundred thousand dollars (\$100,000); and
- 10 (c) Six percent (6%) of taxable net income over one hundred thousand dollars
11 (\$100,000).
- 12 (4) (a) An S corporation shall pay income tax on the same items of income and in the
13 same manner as required for federal purposes, except to the extent required by
14 differences between this chapter and the federal income tax law and
15 regulations.
- 16 (b) 1. If the S corporation is required under Section 1363(d) of the Internal
17 Revenue Code to submit installments of tax on the recapture of LIFO
18 benefits, installments to pay the Kentucky tax due shall be paid on or
19 before the due date of the S corporation's return, as extended, if
20 applicable.
- 21 2. Notwithstanding KRS 141.170(3), no interest shall be assessed on the
22 installment payment for the period of extension.
- 23 (c) If the S corporation is required under Section 1374 or 1375 of the Internal Revenue
24 Code to pay tax on built-in gains or on passive investment income, the amount of
25 tax imposed by this subsection shall be computed by applying the highest rate of tax
26 for the taxable year.

27 ➔Section 13. KRS 141.0401 is amended to read as follows:

1 (1) As used in this section:

2 (a) "Kentucky gross receipts" means an amount equal to the computation of the
3 numerator of the apportionment fraction under KRS 141.120, any
4 administrative regulations related to the computation of the sales factor, and
5 KRS 141.121 and includes the proportionate share of Kentucky gross receipts
6 of all wholly or partially owned limited liability pass-through entities,
7 including all layers of a multi-layered pass-through structure;

8 (b) "Gross receipts from all sources" means an amount equal to the computation
9 of the denominator of the apportionment fraction under KRS 141.120, any
10 administrative regulations related to the computation of the sales factor, and
11 KRS 141.121 and includes the proportionate share of gross receipts from all
12 sources of all wholly or partially owned limited liability pass-through entities,
13 including all layers of a multi-layered pass-through structure;

14 (c) "Combined group" means all members of an affiliated group as defined in
15 KRS 141.200(9)(b) and all limited liability pass-through entities that would be
16 included in an affiliated group if organized as a corporation;

17 (d) "Cost of goods sold" means:

18 1. Amounts that are:

19 a. Allowable as cost of goods sold pursuant to the Internal Revenue
20 Code and any guidelines issued by the Internal Revenue Service
21 relating to cost of goods sold, unless modified by this paragraph;
22 and

23 b. Incurred in acquiring or producing the tangible product generating
24 the Kentucky gross receipts.

25 2. For manufacturing, producing, reselling, retailing, or wholesaling
26 activities, cost of goods sold shall only include costs directly incurred in
27 acquiring or producing the tangible product. In determining cost of

1 goods sold:

2 a. Labor costs shall be limited to direct labor costs as defined in
3 paragraph (f) of this subsection;

4 b. Bulk delivery costs as defined in paragraph (g) of this subsection
5 may be included; and

6 c. Costs allowable under Section 263A of the Internal Revenue Code
7 may be included only to the extent the costs are incurred in
8 acquiring or producing the tangible product generating the
9 Kentucky gross receipts. Notwithstanding the foregoing, indirect
10 labor costs allowable under Section 263A shall not be included;

11 3. For any activity other than manufacturing, producing, reselling, retailing,
12 or wholesaling, no costs shall be included in cost of goods sold.

13 As used in this paragraph, "guidelines issued by the Internal Revenue Service"
14 includes regulations, private letter rulings, or any other guidance issued by the
15 Internal Revenue Service that may be relied upon by taxpayers under reliance
16 standards established by the Internal Revenue Service;

17 (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by
18 returns and allowances attributable to Kentucky gross receipts, less the
19 cost of goods sold attributable to Kentucky gross receipts. If the amount
20 of returns and allowances attributable to Kentucky gross receipts and the
21 cost of goods sold attributable to Kentucky gross receipts is zero, then
22 "Kentucky gross profits" means Kentucky gross receipts; and

23 2. "Gross profits from all sources" means gross receipts from all sources
24 reduced by returns and allowances attributable to gross receipts from all
25 sources, less the cost of goods sold attributable to gross receipts from all
26 sources. If the amount of returns and allowances attributable to gross
27 receipts from all sources and the cost of goods sold attributable to gross

- 1 receipts from all sources is zero, then gross profits from all sources
2 means gross receipts from all sources;
- 3 (f) "Direct labor" means labor that is incorporated into the tangible product sold
4 or is an integral part of the manufacturing process;
- 5 (g) "Bulk delivery costs" means the cost of delivering the product to the consumer
6 if:
- 7 1. The tangible product is delivered in bulk and requires specialized
8 equipment that generally precludes commercial shipping; and
 - 9 2. The tangible product is taxable under KRS 138.220;
- 10 (h) "Manufacturing" and "producing" means:
- 11 1. Manufacturing, producing, constructing, or assembling components to
12 produce a significantly different or enhanced end tangible product;
 - 13 2. Mining or severing natural resources from the earth; or
 - 14 3. Growing or raising agricultural or horticultural products or animals;
- 15 (i) "Real property" means land and anything growing on, attached to, or erected
16 on it, excluding anything that may be severed without injury to the land;
- 17 (j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible
18 product;
- 19 (k) "Tangible personal property" means property, other than real property, that has
20 physical form and characteristics; and
- 21 (l) "Tangible product" means real property and tangible personal property;
- 22 (2) (a) For taxable years beginning on or after January 1, 2007, an annual limited
23 liability entity tax shall be paid by every corporation and every limited liability
24 pass-through entity doing business in Kentucky on all Kentucky gross receipts
25 or Kentucky gross profits except as provided in this subsection. A small
26 business exclusion from this tax shall be provided based on the reduction
27 contained in this subsection. The tax shall be the greater of the amount

1 computed under paragraph (b) of this subsection or one hundred seventy-five
2 dollars (\$175), regardless of the application of any tax credits provided under
3 this chapter or any other provisions of the Kentucky Revised Statutes for
4 which the business entity may qualify.

5 (b) The limited liability entity tax shall be the lesser of subparagraph 1. or 2. of
6 this paragraph:

7 1. a. If the corporation's or limited liability pass-through entity's gross
8 receipts from all sources are three million dollars (\$3,000,000) or
9 less, the limited liability entity tax shall be one hundred seventy-
10 five dollars (\$175)~~[zero]~~;

11 b. If the corporation's or limited liability pass-through entity's gross
12 receipts from all sources are greater than three million dollars
13 (\$3,000,000) but less than six million dollars (\$6,000,000), the
14 limited liability entity tax shall be nine and one-half cents (\$0.095)
15 per one hundred dollars (\$100) of the corporation's or limited
16 liability pass-through entity's Kentucky gross receipts reduced by
17 an amount equal to two thousand eight hundred fifty dollars
18 (\$2,850) multiplied by a fraction, the numerator of which is six
19 million dollars (\$6,000,000) less the amount of the corporation's or
20 limited liability pass-through entity's Kentucky gross receipts for
21 the taxable year, and the denominator of which is three million
22 dollars (\$3,000,000), but in no case shall the result be less than
23 one hundred seventy-five dollars (\$175)~~[zero]~~;

24 c. If the corporation's or limited liability pass-through entity's gross
25 receipts from all sources are equal to or greater than six million
26 dollars (\$6,000,000), the limited liability entity tax shall be nine
27 and one-half cents (\$0.095) per one hundred dollars (\$100) of the

1 corporation's or limited liability pass-through entity's Kentucky
2 gross receipts.

- 3 2. a. If the corporation's or limited liability pass-through entity's gross
4 profits from all sources are three million dollars (\$3,000,000) or
5 less, the limited liability entity tax shall be one hundred seventy-
6 five dollars (\$175)~~[zero]~~;
- 7 b. If the corporation's or limited liability pass-through entity's gross
8 profits from all sources are at least three million dollars
9 (\$3,000,000) but less than six million dollars (\$6,000,000), the
10 limited liability entity tax shall be seventy-five cents (\$0.75) per
11 one hundred dollars (\$100) of the corporation's or limited liability
12 pass-through entity's Kentucky gross profits, reduced by an amount
13 equal to twenty-two thousand five hundred dollars (\$22,500)
14 multiplied by a fraction, the numerator of which is six million
15 dollars (\$6,000,000) less the amount of the corporation's or limited
16 liability pass-through entity's Kentucky gross profits, and the
17 denominator of which is three million dollars (\$3,000,000), but in
18 no case shall the result be less than one hundred seventy-five
19 dollars (\$175)~~[zero]~~;
- 20 c. If the corporation's or limited liability pass-through entity's gross
21 profits from all sources are equal to or greater than six million
22 dollars (\$6,000,000), the limited liability entity tax shall be
23 seventy-five cents (\$0.75) per one hundred dollars (\$100) of all of
24 the corporation's or limited liability pass-through entity's Kentucky
25 gross profits.

26 In determining eligibility for the reductions contained in this paragraph, a
27 member of a combined group shall consider the combined gross receipts and

1 the combined gross profits from all sources of the entire combined group,
2 including eliminating entries for transactions among the group.

3 (c) A credit shall be allowed against the tax imposed under paragraph (a) of this
4 subsection for the current year to a corporation or limited liability pass-
5 through entity that owns an interest in a limited liability pass-through entity.
6 The credit shall be the proportionate share of tax calculated under this
7 subsection by the lower-level pass-through entity, as determined after the
8 amount of tax calculated by the pass-through entity has been reduced by the
9 minimum tax of one hundred seventy-five dollars (\$175). The credit shall
10 apply across multiple layers of a multi-layered pass-through entity structure.
11 The credit at each layer shall include the credit from each lower layer, after
12 reduction for the minimum tax of one hundred seventy-five dollars (\$175) at
13 each layer.

14 (d) The department may promulgate administrative regulations to establish a
15 method for calculating the cost of goods sold attributable to Kentucky.

16 (3) A nonrefundable credit based on the tax calculated under subsection (2) of this
17 section shall be allowed against the tax imposed by KRS 141.020 or 141.040. The
18 credit amount shall be determined as follows:

19 (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040
20 shall be equal to the amount of tax calculated under subsection (2) of this
21 section for the current year after subtraction of any credits identified in KRS
22 141.0205, reduced by the minimum tax of one hundred seventy-five dollars
23 (\$175), plus any credit determined in paragraph (b) of this subsection for tax
24 paid by wholly or partially owned limited liability pass-through entities. The
25 amount of credit allowed to a corporation based on the amount of tax paid
26 under subsection (2) of this section for the current year shall be applied to the
27 income tax due from the corporation's activities in this state. Any remaining

1 credit from the corporation shall be disallowed.

2 (b) The credit allowed members, shareholders, or partners of a limited liability
3 pass-through entity shall be the members', shareholders', or partners'
4 proportionate share of the tax calculated under subsection (2) of this section
5 for the current year after subtraction of any credits identified in KRS
6 141.0205, as determined after the amount of tax paid has been reduced by the
7 minimum tax of one hundred seventy-five dollars (\$175). The credit allowed
8 to members, shareholders, or partners of a limited liability pass-through entity
9 shall be applied to income tax assessed on income from the limited liability
10 pass-through entity. Any remaining credit from the limited liability pass-
11 through entity shall be disallowed.

12 (4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms
13 prepared by the department, on or before the fifteenth day of the fourth month
14 following the close of the taxpayer's taxable year. Any tax remaining due after
15 making the payments required in KRS ~~141.044~~~~141.042~~ shall be paid by the
16 original due date of the return.

17 (5) The department shall prescribe forms and promulgate administrative regulations as
18 needed to administer the provisions of this section.

19 (6) The tax imposed by subsection (2) of this section shall not apply to:

20 (a) **For taxable years beginning prior to January 1, 2021:**

21 **1.** Financial institutions, as defined in KRS 136.500, except banker's banks
22 organized under KRS 287.135 or 286.3-135;

23 **2.**~~[(b)]~~ Savings and loan associations organized under the laws of this
24 state and under the laws of the United States and making loans to
25 members only;

26 **3.**~~[(e)]~~ Banks for cooperatives;

27 **4.**~~[(d)]~~ Production credit associations;

- 1 ~~5.(e)~~ Insurance companies, including farmers' or other mutual hail,
2 cyclone, windstorm, or fire insurance companies, insurers, and
3 reciprocal underwriters;
- 4 ~~6.(f)~~ Corporations or other entities exempt under Section 501 of the
5 Internal Revenue Code;
- 6 ~~7.(g)~~ Religious, educational, charitable, or like corporations not
7 organized or conducted for pecuniary profit;
- 8 ~~8.(h)~~ Corporations whose only owned or leased property located in this
9 state is located at the premises of a printer with which it has contracted
10 for printing, provided that:
- 11 ~~a.(1.)~~ The property consists of the final printed product, or copy from
12 which the printed product is produced; and
- 13 ~~b.(2.)~~ The corporation has no individuals receiving compensation in this
14 state as provided in KRS 141.901;
- 15 ~~9.(i)~~ Public service corporations subject to tax under KRS 136.120;
- 16 ~~10.(j)~~ Open-end registered investment companies organized under the
17 laws of this state and registered under the Investment Company Act of
18 1940;
- 19 ~~11.(k)~~ Any property or facility which has been certified as a fluidized bed
20 energy production facility as defined in KRS 211.390;
- 21 ~~12.(l)~~ An alcohol production facility as defined in KRS 247.910;
- 22 ~~13.(m)~~ Real estate investment trusts as defined in Section 856 of the
23 Internal Revenue Code;
- 24 ~~14.(n)~~ Regulated investment companies as defined in Section 851 of the
25 Internal Revenue Code;
- 26 ~~15.(o)~~ Real estate mortgage investment conduits as defined in Section
27 860D of the Internal Revenue Code;

1 ~~16.(p)~~ Personal service corporations as defined in Section 269A(b)(1) of
2 the Internal Revenue Code;

3 ~~17.(e)~~ Cooperatives described in Sections 521 and 1381 of the Internal
4 Revenue Code, including farmers' agricultural and other cooperatives
5 organized or recognized under KRS Chapter 272, advertising
6 cooperatives, purchasing cooperatives, homeowners associations
7 including those described in Section 528 of the Internal Revenue Code,
8 political organizations as defined in Section 527 of the Internal Revenue
9 Code, and rural electric and rural telephone cooperatives; or

10 ~~18.(r)~~ Publicly traded partnerships as defined by Section 7704(b) of the
11 Internal Revenue Code that are treated as partnerships for federal tax
12 purposes under Section 7704(c) of the Internal Revenue Code, or their
13 publicly traded partnership affiliates. "Publicly traded partnership
14 affiliates" shall include any limited liability company or limited
15 partnership for which at least eighty percent (80%) of the limited
16 liability company member interests or limited partner interests are
17 owned directly or indirectly by the publicly traded partnership; **and**

18 **(b) For taxable years beginning on or after January 1, 2021:**

19 **1. Insurance companies, including farmers' or other mutual hail,**
20 **cyclone, windstorm, or fire insurance companies, insurers, and**
21 **reciprocal underwriters;**

22 **2. Corporations or other entities exempt under Section 501 of the**
23 **Internal Revenue Code;**

24 **3. Religious, educational, charitable, or like corporations not organized**
25 **or conducted for pecuniary profit;**

26 **4. Corporations whose only owned or leased property located in this state**
27 **is located at the premises of a printer with which it has contracted for**

- 1 printing, provided that:
- 2 a. The property consists of the final printed product, or copy from
- 3 which the printed product is produced; and
- 4 b. The corporation has no individuals receiving compensation in
- 5 this state as provided in KRS 141.901;
- 6 5. Public service corporations subject to tax under KRS 136.120;
- 7 6. Open-end registered investment companies organized under the laws
- 8 of this state and registered under the Investment Company Act of
- 9 1940;
- 10 7. Any property or facility which has been certified as a fluidized bed
- 11 energy production facility as defined in KRS 211.390;
- 12 8. An alcohol production facility as defined in KRS 247.910;
- 13 9. Real estate investment trusts as defined in Section 856 of the Internal
- 14 Revenue Code;
- 15 10. Regulated investment companies as defined in Section 851 of the
- 16 Internal Revenue Code;
- 17 11. Real estate mortgage investment conduits as defined in Section 860D
- 18 of the Internal Revenue Code;
- 19 12. Personal service corporations as defined in Section 269A(b)(1) of the
- 20 Internal Revenue Code;
- 21 13. Cooperatives described in Sections 521 and 1381 of the Internal
- 22 Revenue Code, including farmers' agricultural and other cooperatives
- 23 organized or recognized under KRS Chapter 272, advertising
- 24 cooperatives, purchasing cooperatives, homeowners associations
- 25 including those described in Section 528 of the Internal Revenue
- 26 Code, political organizations as defined in Section 527 of the Internal
- 27 Revenue Code, and rural electric and rural telephone cooperatives; or

1 **14. Publicly traded partnerships as defined by Section 7704(b) of the**
 2 **Internal Revenue Code that are treated as partnerships for federal tax**
 3 **purposes under Section 7704(c) of the Internal Revenue Code, or their**
 4 **publicly traded partnership affiliates. "Publicly traded partnership**
 5 **affiliates" shall include any limited liability company or limited**
 6 **partnership for which at least eighty percent (80%) of the limited**
 7 **liability company member interests or limited partner interests are**
 8 **owned directly or indirectly by the publicly traded partnership.**

9 (7) (a) As used in this subsection, "qualified exempt organization" means an entity
 10 listed in subsection (6)(a) **and (b)**~~[(a)-(r)]~~ of this section and shall not include
 11 any entity whose exempt status has been disallowed by the Internal Revenue
 12 Service.

13 (b) Notwithstanding any other provisions of this section, any limited liability
 14 pass-through entity that is owned in whole or in part by a qualified exempt
 15 organization shall, in calculating its Kentucky gross receipts or Kentucky
 16 gross profits, exclude the proportionate share of its Kentucky gross receipts or
 17 Kentucky gross profits attributable to the ownership interest of the qualified
 18 exempt organization.

19 (c) Any limited liability pass-through entity that reduces Kentucky gross receipts
 20 or Kentucky gross profits in accordance with paragraph (b) of this subsection
 21 shall disregard the ownership interest of the qualified exempt organization in
 22 determining the amount of credit available under subsection (3) of this
 23 section.

24 (d) The Department of Revenue may promulgate an administrative regulation to
 25 further define "qualified exempt organization" to include an entity for which
 26 exemption is constitutionally or legally required, or to exclude any entity
 27 created primarily for tax avoidance purposes with no legitimate business

1 purpose.

2 (8) The credit permitted by subsection (3) of this section shall flow through multiple
3 layers of limited liability pass-through entities and shall be claimed by the taxpayer
4 who ultimately pays the tax on the income of the limited liability pass-through
5 entity.

6 ➔Section 14. KRS 160.637 is amended to read as follows:

7 (1) "Requesting school districts" shall mean those school districts for which the
8 Department of Revenue is requested to act as tax collector under the authority of
9 KRS 160.627(2).

10 (2) Reasonable expenses not to exceed the actual costs of collection incurred by any tax
11 collector, except the Department of Revenue, for the administration or collection of
12 the school taxes authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and
13 160.621 to 160.633 shall be reimbursed by the school district boards of education
14 on a monthly basis or on the basis agreed upon by the boards of education and the
15 tax collector. The expenses shall be borne by the school districts on a basis
16 proportionate to the revenue received by the districts.

17 (3) The following shall apply only when the Department of Revenue is acting as tax
18 collector under the authority of KRS 160.627(2):

19 (a) When the department is initially requested to be the tax collector under KRS
20 160.627(2), the department shall estimate the costs of implementing the
21 administration of the tax so requested, and shall inform the requesting school
22 district of this estimated cost. The requesting school district shall pay to the
23 department ten percent (10%) of this estimated cost referred to as "start-up
24 costs" within thirty (30) days of notification by the department. Subsequent
25 requesting school districts shall pay their pro rata share, or ten percent (10%),
26 whichever is less, of the unpaid balance of the initial "start-up costs" until the
27 department has fully recovered the costs. The payment shall be made within

- 1 thirty (30) days of notification by the department.
- 2 (b) The Department of Revenue shall also be reimbursed by each school district
3 for its proportionate share of the actual operational expenses incurred by the
4 department in collecting the excise tax. The expenses, which shall be deducted
5 by the Department of Revenue from payments to school districts made under
6 the provisions of KRS 160.627(2), shall be allocated by the department to
7 school districts on a basis proportionate to the number of returns processed by
8 the Department of Revenue for each district compared to the total processed
9 by the Department of Revenue for all districts.
- 10 (c) All funds received by the department under the authority of paragraphs (a) and
11 (b) of this subsection shall be deposited into an account entitled the "school
12 tax fund account," an account created within the restricted fund group set forth
13 in KRS 45.305. The use of these funds shall be restricted to paying the
14 department for the costs described in paragraphs (a) and (b) of this subsection.
15 This account shall not lapse.
- 16 (d) The department may retain a portion of the school tax revenues collected in a
17 special account entitled the "school tax refund account" which is an account
18 created within the restricted fund group set forth in KRS 45.305. The sole
19 purpose of this account shall be to authorize the Department of Revenue to
20 refund school taxes. This account shall not lapse. Refunds shall be made in
21 accordance with the provisions in KRS 134.580(6)(~~(5)~~), and when the
22 taxpayer has made an overpayment or a payment where no tax was due as
23 defined in KRS 134.580(7)(~~(6)~~), within four (4) years of payment.
- 24 (e) KRS 160.621 notwithstanding, when the department is acting as tax collector
25 under the authority of KRS 160.627(2), the requesting school district may
26 enact the tax enumerated in KRS 160.621 only at the following rates: five
27 percent (5%), ten percent (10%), fifteen percent (15%), and twenty percent

1 (20%) on a school district resident's state individual income tax liability as
2 computed under KRS Chapter 141.

3 (f) Beginning August 1, 1982, any school district which requests the department
4 to collect taxes under the authority of KRS 160.627(2) shall inform the
5 department of this request not less than one hundred fifty (150) days prior to
6 January 1.

7 (g) The department shall not be required to collect taxes authorized in KRS
8 160.621 of an individual when the department is not pursuing collection of
9 that individual's state income taxes. The department shall not be required to
10 collect or defend the tax set forth in KRS 160.621 in any board or court of this
11 state.

12 (h) Any overpayments of the tax set forth in KRS 141.020 or payments made
13 when no tax was due may be applied to any tax liability arising under KRS
14 160.621 before a refund is authorized to the taxpayer. No individual's tax
15 payment shall be credited to the tax set forth in KRS 160.621 until all
16 outstanding state income tax liabilities of that individual have been paid.

17 (i) KRS 160.510 notwithstanding, the State Auditor shall be the only party
18 authorized to audit the Department of Revenue with respect to the
19 performance of its duties under KRS 160.621.

20 ➔Section 15. KRS 141.206 is amended to read as follows:

21 (1) Every pass-through entity doing business in this state shall, on or before the
22 fifteenth day of the fourth month following the close of its annual accounting
23 period, file a copy of its federal tax return with the form prescribed and furnished by
24 the department.

25 (2) Pass-through entities shall determine net income in the same manner as in the case
26 of an individual under KRS 141.010 and the adjustment required under Sections
27 703(a) and 1363(b) of the Internal Revenue Code. Computation of net income under

1 this section and the computation of the partner's, member's, or shareholder's
2 distributive share shall be computed as nearly as practicable identical with those
3 required for federal income tax purposes except to the extent required by
4 differences between this chapter and the federal income tax law and regulations.

5 (3) Individuals, estates, trusts, or corporations doing business in this state as a partner,
6 member, or shareholder in a pass-through entity shall be liable for income tax only
7 in their individual, fiduciary, or corporate capacities, and no income tax shall be
8 assessed against the net income of any pass-through entity, except as required for S
9 corporations by KRS 141.040.

10 (4) (a) Every pass-through entity required to file a return under subsection (1) of this
11 section, except publicly traded partnerships as defined in KRS
12 141.0401(6)(a)18. and (b)14.~~[(r)]~~, shall withhold Kentucky income tax on the
13 distributive share, whether distributed or undistributed, of each:

- 14 1. Nonresident individual partner, member, or shareholder; and
- 15 2. Corporate partner or member that is doing business in Kentucky only
16 through its ownership interest in a pass-through entity.

17 (b) Withholding shall be at the maximum rate provided in KRS 141.020 or
18 141.040.

19 (5) (a) Effective for taxable years beginning after December 31, 2011, every pass-
20 through entity required to withhold Kentucky income tax as provided by
21 subsection (4) of this section shall make a declaration and payment of
22 estimated tax for the taxable year if:

- 23 1. For a nonresident individual partner, member, or shareholder, the
24 estimated tax liability can reasonably be expected to exceed five
25 hundred dollars (\$500); or
- 26 2. For a corporate partner or member that is doing business in Kentucky
27 only through its ownership interest in a pass-through entity, the

1 estimated tax liability can reasonably be expected to exceed five
2 thousand dollars (\$5,000).

3 (b) The declaration and payment of estimated tax shall contain the information
4 and shall be filed as provided in KRS 141.207.

5 (6) (a) If a pass-through entity demonstrates to the department that a partner,
6 member, or shareholder has filed an appropriate tax return for the prior year
7 with the department, then the pass-through entity shall not be required to
8 withhold on that partner, member, or shareholder for the current year unless
9 the exemption from withholding has been revoked pursuant to paragraph (b)
10 of this subsection.

11 (b) An exemption from withholding shall be considered revoked if the partner,
12 member, or shareholder does not file and pay all taxes due in a timely manner.
13 An exemption so revoked shall be reinstated only with permission of the
14 department. If a partner, member, or shareholder who has been exempted from
15 withholding does not file a return or pay the tax due, the department may
16 require the pass-through entity to pay to the department the amount that
17 should have been withheld, up to the amount of the partner's, member's, or
18 shareholder's ownership interest in the entity. The pass-through entity shall be
19 entitled to recover a payment made pursuant to this paragraph from the
20 partner, member, or shareholder on whose behalf the payment was made.

21 (7) In determining the tax under this chapter, a resident individual, estate, or trust that is
22 a partner, member, or shareholder in a pass-through entity shall take into account
23 the partner's, member's, or shareholder's total distributive share of the pass-through
24 entity's items of income, loss, deduction, and credit.

25 (8) In determining the tax under this chapter, a nonresident individual, estate, or trust
26 that is a partner, member, or shareholder in a pass-through entity required to file a
27 return under subsection (1) of this section shall take into account:

- 1 (a) 1. If the pass-through entity is doing business only in this state, the
2 partner's, member's, or shareholder's total distributive share of the pass-
3 through entity's items of income, loss, and deduction; or
4 2. If the pass-through entity is doing business both within and without this
5 state, the partner's, member's, or shareholder's distributive share of the
6 pass-through entity's items of income, loss, and deduction multiplied by
7 the apportionment fraction of the pass-through entity as prescribed in
8 subsection (11) of this section; and
9 (b) The partner's, member's, or shareholder's total distributive share of credits of
10 the pass-through entity.
- 11 (9) A corporation that is subject to tax under KRS 141.040 and is a partner or member
12 in a pass-through entity shall take into account the corporation's distributive share of
13 the pass-through entity's items of income, loss, and deduction and:
14 (a) 1. For taxable years beginning on or after January 1, 2007, but prior
15 to January 1, 2018, shall include the proportionate share of the sales,
16 property, and payroll of the limited liability pass-through entity or
17 general partnership in computing its own apportionment factor; and
18 2. For taxable years beginning on or after January 1, 2018, shall include the
19 proportionate share of the sales of the limited liability pass-through
20 entity or general partnership in computing its own apportionment factor;
21 and
22 (b) Credits from the partnership.
- 23 (10) (a) If a pass-through entity is doing business both within and without this state,
24 the pass-through entity shall compute and furnish to each partner, member, or
25 shareholder the numerator and denominator of each factor of the
26 apportionment fraction determined in accordance with subsection (11) of this
27 section.

1 (b) For purposes of determining an apportionment fraction under paragraph (a) of
2 this subsection, if the pass-through entity is:

- 3 1. Doing business both within and without this state; and
- 4 2. A partner or member in another pass-through entity;

5 then the pass-through entity shall be deemed to own the pro rata share of the
6 property owned or leased by the other pass-through entity, and shall also
7 include its pro rata share of the other pass-through entity's payroll and sales.

8 (c) The phrases "a partner or member in another pass-through entity" and "doing
9 business both within and without this state" shall extend to each level of
10 multiple-tiered pass-through entities.

11 (d) The attribution to the pass-through entity of the pro rata share of property,
12 payroll and sales from its role as a partner or member in another pass-through
13 entity will also apply when determining the pass-through entity's ultimate
14 apportionment factor for property, payroll and sales as required under
15 subsection (11) of this section.

16 (11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity
17 doing business within and without the state shall compute an apportionment
18 fraction, the numerator of which is the property factor, representing twenty-
19 five percent (25%) of the fraction, plus the payroll factor, representing twenty-
20 five percent (25%) of the fraction, plus the sales factor, representing fifty
21 percent (50%) of the fraction, with each factor determined in the same manner
22 as provided in KRS 141.901, and the denominator of which is four (4),
23 reduced by the number of factors, if any, having no denominator, provided
24 that if the sales factor has no denominator, then the denominator shall be
25 reduced by two (2).

26 (b) For taxable years beginning on or after January 1, 2018, a pass-through entity
27 doing business within and without the state shall compute an apportionment

1 fraction as provided in KRS 141.120.

2 (12) Resident individuals, estates, or trusts that are partners in a partnership, members of
3 a limited liability company electing partnership tax treatment for federal income tax
4 purposes, owners of single member limited liability companies, or shareholders in
5 an S corporation which does not do business in this state are subject to tax under
6 KRS 141.020 on federal net income, gain, deduction, or loss passed through the
7 partnership, limited liability company, or S corporation.

8 (13) An S corporation election made in accordance with Section 1362 of the Internal
9 Revenue Code for federal tax purposes is a binding election for Kentucky tax
10 purposes.

11 (14) (a) Nonresident individuals shall not be taxable on investment income distributed
12 by a qualified investment partnership. For purposes of this subsection, a
13 "qualified investment partnership" means a pass-through entity that, during the
14 taxable year, holds only investments that produce income that would not be
15 taxable to a nonresident individual if held or owned individually.

16 (b) A qualified investment partnership shall be subject to all other provisions
17 relating to a pass-through entity under this section and shall not be subject to
18 the tax imposed under KRS 141.040 or 141.0401.

19 (15) (a) 1. A pass-through entity may file a composite income tax return on behalf
20 of electing nonresident individual partners, members, or shareholders.

21 2. The pass-through entity shall report and pay on the composite income
22 tax return income tax at the highest marginal rate provided in this
23 chapter on any portion of the partners', members', or shareholders' pro
24 rata or distributive shares of income of the pass-through entity from
25 doing business in this state or deriving income from sources within this
26 state. Payments made pursuant to subsection (5) of this section shall be
27 credited against any tax due.

- 1 3. The pass-through entity filing a composite return shall still make
2 estimated tax payments if required to do so by subsection (5) of this
3 section, and shall remain subject to any penalty provided by KRS
4 131.180 or 141.990 for any declaration underpayment or any installment
5 not paid on time.
- 6 4. The partners', members', or shareholders' pro rata or distributive share of
7 income shall include all items of income or deduction used to compute
8 adjusted gross income on the Kentucky return that is passed through to
9 the partner, member, or shareholder by the pass-through entity, including
10 but not limited to interest, dividend, capital gains and losses, guaranteed
11 payments, and rents.
- 12 (b) A nonresident individual partner, member, or shareholder whose only source
13 of income within this state is distributive share income from one (1) or more
14 pass-through entities may elect to be included in a composite return filed
15 pursuant to this section.
- 16 (c) A nonresident individual partner, member, or shareholder that has been
17 included in a composite return may file an individual income tax return and
18 shall receive credit for tax paid on the partner's behalf by the pass-through
19 entity.
- 20 (d) A pass-through entity shall deliver to the department a return upon a form
21 prescribed by the department showing the total amounts paid or credited to its
22 electing nonresident individual partners, members, or shareholders, the
23 amount paid in accordance with this subsection, and any other information the
24 department may require. A pass-through entity shall furnish to its nonresident
25 partner, member, or shareholder annually, but not later than the fifteenth day
26 of the fourth month after the end of its taxable year, a record of the amount of
27 tax paid on behalf of the partner, member, or shareholder on a form prescribed

1 by the department.

2 ➔Section 16. Sections 5, 12, 14, 15, 16, 32, 40, 41, 48, and 60 of HB 354/EN
3 (2019 Ky. Acts ch. 151) as enacted by the 2019 General Assembly are hereby repealed
4 and shall not be codified by the Reviser of Statutes.